

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MORRIS HUDSON,	§	
	§	No. 771, 2010
Defendant Below-	§	
Appellant,	§	Court Below: Superior Court
	§	of the State of Delaware in and
v.	§	for New Castle County
	§	
STATE OF DELAWARE	§	ID No. 1002004601
	§	
Plaintiff Below-	§	
Appellee.	§	

Submitted: May 17, 2011

Decided: July 6, 2011

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 6th day of July 2011, it appears to the Court that:

(1) Defendant-Below/Appellant, Morris Hudson, appeals from his Superior Court jury convictions for possession with intent to deliver a narcotic, conspiracy second degree, and possession of drug paraphernalia. Hudson contends that the Superior Court erred in denying his motion to suppress. We find no merit to Hudson's appeal and affirm.

(2) One afternoon in 2010, a team of officers in the Drug, Vice, and Organized Crime Unit (the "DVOC Unit") of the Wilmington Police Department was conducting mobile surveillance of an individual. The team included Detective Andrea Janvier, a fourteen-year veteran of the Wilmington Police Department,

who had spent the last eleven years working in the DVOC Unit. The team knew that the target of the investigation had received, sold, and abused heroin in the past. In fact, officers had “prior dealing with the individual, as well as [confidential informant] information.” Specifically, a confidential informant had participated in controlled purchases of heroin with the individual. Officers knew that the individual sold heroin in “[b]lue glassine bags, or bundled heroin.” The target allegedly was aware that the Wilmington Police Department “was on to him,” so “[h]e would often meet people in his vehicle outside of [Wilmington].”

(3) On the day of the investigation, the target was operating a Nissan. The officers observed the Nissan enter a gas station parking lot north of Wilmington. Within a couple minutes, the officers observed a Buick enter that same parking lot. The Buick contained three people: Morris Hudson was driving, Keenan Anderson was seated in the rear, and Shakita Thompson was the front seat passenger. After Hudson parked, Anderson exited the Buick and entered the Nissan. A few moments later, Anderson exited the Nissan and reentered the Buick. None of the individuals purchased gas or entered the store at the gas station. The vehicles then exited the parking lot and traveled in separate directions.

(4) The officers followed both cars, but soon lost sight of the Nissan. Several officers, including Detective Janvier, continued to follow the Buick though. The Buick then entered a different gas station parking lot. Officers

observed Hudson exit the vehicle, enter the store at the gas station, and then exit the store and reenter the vehicle, all within approximately one minute. At that time, several officers, including Detective Janvier, approached the Buick. The officers were wearing tactical vests, which had the word “police” displayed on the front and back. The officers had not drawn any weapons at that time, but they ordered the occupants of the Buick to place their hands in the air.

(5) One officer then observed Anderson reach for an unknown object near his waist. Because the officers believed Anderson may have been armed, they removed Anderson from the vehicle and placed him into custody. Meanwhile, Detective Janvier was instructing Hudson, who was still seated in the Buick, to keep his hands up. Hudson initially complied, but then dropped his hands to his lap and out of Janvier’s view. The officers instructed Hudson to exit the vehicle, but he ignored that command. The officers then removed Hudson and placed him on the ground, where he continued to ignore commands to place his hands behind his back. In response, Detective Janvier used a taser to restrain Hudson. Hudson eventually complied with the officers’ requests and was placed into custody. The officers discovered crack cocaine on Hudson’s person. The officers also discovered a clear plastic sandwich bag and a digital scale in the Buick.

(6) Hudson was charged by indictment with possession with intent to deliver a narcotic, maintaining a vehicle for keeping controlled substances,

conspiracy second degree, possession of drug paraphernalia, resisting arrest, and driving with a suspended license. Hudson moved to suppress the evidence seized. At the suppression hearing that followed, Detective Janvier testified about the relevant facts. Detective Janvier also testified about her knowledge of drug transactions in parking lots and gas stations as follows:

Typical meet would be probable telephone communications as to a meet location. The vehicle would get there first, await for the arriving vehicle. The person who is selling the drugs usually would get out, maybe get in that person's vehicle, or the drug user would get out, get into another person's vehicle. It would be a brief conversation. Sometimes you can see if you are close enough, sometimes you can't. They kind of pull off to the side. They wouldn't go -- wouldn't get gas, wouldn't go in a store to purchase an item. Sometimes maybe they go to the store afterwards, in this case not. Then the two would go back to their separate vehicles and go their separate ways.

(7) After Janvier's testimony, the prosecutor and defense counsel presented their arguments. The Superior Court then recounted the relevant facts and concluded from the bench as follows:

One of the cases that I am looking at is [the] Supreme Court case in [Loflin] v. State. The Court held that the detective had knowledge of the way drug transactions are done in the area, had observed the defendant exiting his own vehicle, entering the back seat of another vehicle and those circumstances were enough to create a reasonable articulable suspicion that the defendant was engaged in a drug transaction. Also in [Loflin,] the area was known for drug activity, and according to the officer's experience, the defendant's behavior was consistent with the sale of illegal drugs.

One of the other cases is the Riley case, which I find distinguishable. In that case, there was two under aged girls

parked outside the liquor store. There was information that the liquor store had been providing alcohol to minors. However, there was no evidence that the under aged girls in that case were known to solicit others to illegally obtain alcohol for them. They were, in other words, not [the] equivalent of known drug dealers. So [] I am distinguishing the Riley case.

This was not a known area for drug dealing, the [gas] station in this case. However, the drug dealer was known, and this drug dealer was known to avoid known drug areas. In fact, he was known to make transactions outside the city limits. It was also clear that even though this took place in the middle of the afternoon, the [Nissan] was there for no other purpose, let alone any apparent legitimate purpose. The [Nissan] did not purchase gas, did not go into the store. The Buick, by the same token, was not at the gas station for any apparent legitimate purpose. Rather, its reasonable articulable suspicion that the reason the Buick arrive[d] at the [gas] station was to have contact with the known drug dealer

I, therefore, find that the reasonable articulable suspicion to detain that automobile and its occupants was created at the time that the officers observed the very quick entering and exiting of the vehicle of the known drug dealer.

Additionally, once that vehicle was stopped, I think there is sufficient evidence to demonstrate that the officers had reason to detain these individuals and search them for officer safety. Then, of course, there was a search incident to arrest, as well as [] plain view searches. So in [] the totality of the circumstances, I find that there was a reasonable articulable suspicion of criminal activity sufficient to stop the vehicle. . . .

In accordance with that analysis, the Superior Court denied Hudson's motion to suppress.

(8) The matter then proceeded to a jury trial. The jury found Hudson guilty of possession with intent to deliver a narcotic, conspiracy second degree, and possession of drug paraphernalia. For the possession with intent to deliver a

narcotic conviction, the Superior Court sentenced Hudson to ten years at Level V, suspended after three years for decreasing levels of supervision. The Superior Court also sentenced Hudson to one year concurrent probation terms. This appeal followed.

(9) We review the Superior Court’s denial of a motion to suppress for abuse of discretion.¹ To the extent the Superior Court’s decision is based on factual findings, we review for whether the Superior Court abused its discretion in determining whether there was sufficient evidence to support the findings and whether those findings were clearly erroneous.² To the extent that we examine the Superior Court’s legal conclusions, we review them *de novo* for errors in formulating or applying legal precepts.³

(10) Hudson argues that “the Superior Court’s finding of reasonable articulable suspicion for the seizure of [Hudson] was legally insufficient under the facts and applicable law.” To address Hudson’s argument, we must determine when the officers seized Hudson, and whether, at that time, the officers had a reasonable articulable suspicion that Hudson was engaged in criminal activity.

(11) We consistently have held that the question of when a seizure has occurred “requires focusing upon the police officer’s actions to determine when a

¹ *Williams v. State*, 962 A.2d 210, 214 (Del. 2008) (citing *Lopez-Vazquez v. State*, 956 A.2d 1280, 1284 (Del. 2008)).

² *Id.*

³ *Id.*

reasonable person would have believed he or she was not free to ignore the police presence.”⁴ Both Hudson and the State agree that Hudson was seized when the police officers ordered the occupants of the Buick to place their hands in the air. We agree. The next question then is whether the officers had a reasonable articulable suspicion that Hudson was engaged in criminal activity at that time.

(12) “A police officer may detain an individual for investigatory purposes if the officer has a reasonable, articulable suspicion that the individual is engaged in criminal activity.”⁵ “Reasonable suspicion is a less demanding standard than probable cause.”⁶ “It depends on the ‘the officer’s ability to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion.’”⁷ In determining whether reasonable suspicion exists, we look at the totality of the circumstances,⁸ “as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with [the] officer’s subjective interpretation of those facts.”⁹

⁴ *Jones v. State*, 745 A.2d 856, 869 (Del. 1999). See also *Loper v. State*, 8 A.3d 1169, 1173–74 (Del. 2010); *Moore v. State*, 997 A.2d 656, 663–64 (Del. 2010); *Williams*, 962 A.2d at 215–16; *Lopez-Vazquez*, 956 A.2d at 1286 n.6; *Ross v. State*, 925 A.2d 489, 493–94 (Del. 2007); *Harris v. State*, 806 A.2d 119, 124 (Del. 2002); *Flonnory v. State*, 805 A.2d 854, 858 (Del. 2001); *Woody v. State*, 765 A.2d 1257, 1264 (Del. 2001).

⁵ *Hall v. State*, 981 A.2d 1106, 1111 (Del. 2009) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)).

⁶ *Id.* (citing *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000)).

⁷ *Id.* (quoting *Coleman v. State*, 562 A.2d 1171, 1174 (Del. 1989)).

⁸ *Id.* (citing *Jones*, 745 A.2d at 861).

⁹ *Id.* (quoting *Woody v. State*, 765 A.2d at 1263).

(13) In addressing Hudson’s motion to suppress, the Superior Court relied on our decision in *Lofland v. State*.¹⁰ In *Lofland*, a Wilmington Police officer spotted Lofland and another man standing by the passenger side of a white minivan in a well-known drug area. One of the men was leaning inside the van. When the officer approached, the men immediately started walking in opposite directions. The officer thought that Lofland’s behavior was consistent with drug activity, so he ordered Lofland to stop. Thereafter, Lofland moved to suppress the evidence that the officer ultimately seized on the ground that the officer had no reasonable articulable suspicion that Lofland had committed a crime. At the suppression hearing, the officer was asked about the significance of what he observed (two men next to a minivan with one man’s head leaned into the passenger side of the car). The officer explained:

They have what they call touters out there in Riverside. What happens is that the touters approach the vehicle, find out what the people want, go out into the courtyards to get from the dealer – that’s the way it’s done in Riverside.

In *Lofland*, we held that “[g]iven [the officer]’s knowledge of the way drug deals were done in that neighborhood, his observation of Lofland’s conduct was enough to create a reasonable and articulable suspicion that Lofland was engaged in the sale of illegal drugs.”¹¹

¹⁰ 834 A.2d 826, 2003 WL 22317402 (Del. 2003) (TABLE).

¹¹ *Id.* at *1 (citing *Jones*, 745 A.2d 856).

(14) Our decision in *Hall v. State*¹² also is instructive. There, a detective of the Delaware State Police was conducting surveillance as part of the Governor’s Task Force, which targets street-level drug dealers in areas known for drug activities. The detective pulled into the parking lot of a convenience store and parked next to a car. The detective observed a man later identified as Hall seated in the driver’s seat of that car with a female in the front passenger seat. After several minutes, the detective watched Hall get out of his car and walk into the convenience store for a few minutes and then return to his car, where he continued to sit. About five minutes later, the detective saw another car pull into the parking lot and park off to the side of the store, even though there were a number of open parking spaces in front of the store. The detective watched Hall get out of his car, walk over to the other car, and get in the back seat. At that point, the detective decided that Hall’s actions were “clearly indicative of a drug transaction.” The Court in *Hall*, relying on *Lofland*, upheld the trial judge’s denial of Hall’s motion to suppress and explained:

In Hall’s case, the trial judge concluded that the same reasoning we applied in *Lofland* applies to the facts of this case. We agree. [The] [d]etective [] was assigned to the Governor’s Task Force, which has a primary goal of targeting street-level drug sales. On the evening of Hall’s arrest, [the] [d]etective [] was conducting surveillance in targeted areas known for drug activity [The] [d]etective[’s] [] training and experience

¹² 981 A.2d 1106 (Del. 2009).

made him highly knowledgeable of drug transactions and the conduct of drug dealers.

* * *

We hold that the trial judge properly ruled that [the detective]’s conclusion was reasonable, based on both the objective facts and [the detective]’s “subjective interpretation of those facts,” in light of his extensive experience in investigating drug transactions.¹³

(15) Here, the DVOC Unit knew that the target of its investigation had received, sold, and abused heroin in the past. In fact, a confidential informant had participated in controlled purchases of heroin with this individual. The officers knew that the target was aware that the Wilmington Police Department “was on to him,” so he often would meet people in his car outside of Wilmington. The officers observed the target’s Nissan and Hudson’s Buick enter the gas station parking lot north of Wilmington. The officers also observed Anderson exit the Buick and enter the Nissan, and a few moments later, exit the Nissan and reenter the Buick. None of the individuals purchased gas or entered the store at the gas station.

(16) At the suppression hearing, Janvier -- an eleven year veteran of the DVOC Unit -- testified about her knowledge of drug transactions in parking lots and gas stations. Janvier also testified that she had been involved in thousands of drug investigations during her eleven-year tenure with the DVOC Unit. Like the

¹³ *Id.* at 1112–13 (citation omitted).

officers in *Lofland* and *Hall*, Janvier's training and experience made her highly knowledgeable of drug transactions and the conduct of drug dealers. Unlike the events in *Lofland* and *Hall*, the events in this case did not occur in an area known for drug transactions. But, the officers here observed the occupants of the Buick interacting with a known drug dealer in a manner consistent with a drug transaction. The officers had reasonable articulable suspicion to seize the occupants of the Buick, given the totality of the circumstances "as viewed through the eyes of a reasonable, trained police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts."¹⁴

(17) Hudson also argues that the Superior Court erred in concluding that a concern for officer safety permitted the search of Hudson's person. We have explained that after an officer has conducted a lawful investigative stop supported by reasonable suspicion, the officer has "an absolute right" to conduct a limited search of the suspect for dangerous weapons if "the officer has a reasonable belief that the detainee is presently armed and dangerous."¹⁵ We also have explained that officer safety is both "legitimate and weighty," but it cannot in all circumstances justify a search or seizure because "[o]therwise nearly any invasion of a person's

¹⁴ See *id.* at 1111 (quoting *Woody*, 765 A.2d at 1263).

¹⁵ *Caldwell v. State*, 780 A.2d 1037, 1051 (Del. 2001) (quoting *Hicks v. State*, 631 A.2d 6, 7 (Del. 1993)).

privacy could be justified by arguing that the police needed to protect themselves from harm.”¹⁶

(18) Here, Detective Janvier instructed Hudson to keep his hands in the air. Hudson initially complied, but then dropped his hands to his lap and out of Janvier’s view. Hudson also ignored the officers’ instructions to exit the Buick. Hudson continued to ignore the officers’ commands, even after the officers removed him from the Buick and placed him on the ground. Hudson only complied after Detective Janvier employed a taser. In these circumstances, a concern for officer safety justified the limited search because Hudson repeatedly defied the officers’ commands and because Janvier had reason to believe that Hudson was armed and dangerous when he dropped his hands out of her view.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹⁶ *Id.* (quoting *Jones*, 745 A.2d at 872 n.78).